

respond to an initial rejection without the restrictions imposed by a final action. Claims 7-10 were initially withdrawn from consideration by the examiner even though applicant indicated they were readable on the elected species. Applicant responded to the withdrawal by pointing out that if claims 7-10 are not considered to be drawn to the elected species, then a species was disclosed but not identified by the examiner for election. Claims 7-10 are dependent upon claims to the elected species. The examiner has now indicated that they will be allowed if a parent claim is allowed. Claims 35 and 36 were objected to as to form and expressly not treated on the merits.

Claims 7-10, and claims 35 and 36, having now been examined and rejected for the first time, should not be finally rejected. Applicant is entitled to traverse a rejection on the first examination of an originally submitted claim without the showings required by and impediments of a final rejection. See, MPEP 706.07 (a).

Reconsideration of the rejection of claims 7-10 as indefinite is requested. Applicant assumes that the rejection is based upon applicant's election and that the examiner regards the claims indicated as not reading on the elected species to not be claiming the elected invention. Otherwise (and particularly because it has been indicated that they would be allowed with the parent claims), it is not understood how the claims are regarded as indefinite. However, if they are regarded as merely

not readable on the elected invention, they would not have been examined and rejected (although in this case that leads to the further difficulty of where, when and how will they be examined?) In any event, it is not understood how they are both withdrawn from consideration and finally rejected.

It is submitted that claims 7-10 were appropriately examined, but should not be regarded as indefinite. First, procedurally, because applicant should not be placed in the position of having to respond, as he must, to a substantive rejection of withdrawn claims, and possibly be placed in the position of appealing the rejection. Second, and substantively, insofar as the drawing of Figure 1 is concerned, the description on page 6, lines 2-6, reads on the structure of and applies to Figure 1, which eliminates the understood basis for the indefiniteness rejection. The specific description of Figure 1 on page 10 indicates that a preferred embodiment of the construction shown in Figure 1 has a core strand of liquid crystal polymer that has a tenacity no greater than 10 grams per denier. The description on page 6 indicates that high strength synthetic fibers can be used along with a normal strength fiber (e.g., the core shown in Figure 1 and as recited in claim 1 and described on page 10). Thus, when the embodiment of Figure 1 is considered in the light of the description on page 6, there is no compelling reason to limit the physical construction shown in Figure 1 to an all low strength fiber

construction. While it might fairly be said that Figure 1 thereby supports two embodiments or two variations of one embodiment, the election requirement did not preclude such a scope of the elements in Figure 1, nor did it assert that the use of high strength fibers as described on page 6 would be considered a separate embodiment for purposes of a species election. It is submitted that there was no compelling reason to do so, and not doing so is supported by and consistent with the examiner's appropriate indication that claims 7-10 would be allowable with the parent claims. Thus, examination of claims 7-10 imposes no extra burden upon the examination. Further, if no generic claim is allowed, with what species identified by the examiner would the examiner accept claims 7-10, written in independent form, for examination purposes?

In view of the above, claims 7-10 should be considered as directed to the elected species and the rejection should not be final.

Reconsideration and withdrawal of the final rejection of claims 1-3, 5, 6, 11, 12, 15-18, 25, 26, 35 and 36 as unpatentable over Bettcher '215 in view of Robins et al. is requested. Applicant repeats and incorporates by reference the remarks relating to this issue set forth in the last response.

In particular, applicant submits that the examiner's response to applicant's amendment does not support the rejection, but rather supports patentability. This, in

turn shows that an issue has not been reached or expressed over which the applicant and the examiner are at odds, and that the final rejection is premature.

The examiner has cited nothing to support his statement that, because of the mention of Vectran in Robins et al., it would have been obvious that applicant's claimed yarn produced with Vectran M "may have a greater cut resistance as well as other property improvements" over the use of Kevlar in Bettcher. The word "may" is revealing, because it indicates that, at most, the rejection is directed to an "obvious to try" standard, not the standard of Section 103, which requires predictability.

No distinction is made in Robins et al. between liquid crystal polymer fibers having a tenacity of no greater than 10 grams per denier (e.g., Vectran M) and those having greater tenacity (e.g., Vectran HS). Therefore, Robins et al. does not teach the specific use of Vectran M as a substitute for anything, much less Kevlar, and much less in a yarn construction other than one having a cast-on knitted monofilament fiber or wire. It is well settled that a disclosure of a genus does not make the use of specific species ipso facto obvious. This is especially true where as here the species have at least one decidedly different characteristic (tenacity) that would appear to be functionally significant.

The examiner also states that, "if a tougher and more cut resistant product is desired then it would have

been obvious to [substitute Vectran HS?] for the yarn of higher tenacity materials, and if less strength is necessary and a softer more comfortable product is desired then it would have been well within the skill of one of ordinary skill in the art to form the yarn of materials having a lesser tenacity and a softer hand." That reasoning, of course, supports patentability of the rejected claims. Applicant wants and achieves a highly cut-resistant product, yet claims use of normal strength liquid crystal polymer fiber. See page 2, lines 15-21 where the first mentioned feature of the invention is that it provides a cut-resistant knittable composite yarn using a yarn or fiber of normal strength made from Vectran liquid crystal polymer, to provide a composite yarn of comparable high cut-resistance to composite yarns of similar construction that utilize high strength synthetic yarn or fiber. See also page 6, lines 21-25, and page 19, lines 16-22.

Nothing cited by the examiner suggests that use of normal strength Vectran will provide comparable cut-resistance to high strength fibers of known cut-resistance. The examiner's argument, that one would substitute a high strength fiber to achieve high cut-resistance, is still an obvious to try standard, because there is no showing that it is the high strength that produces the cut-resistance. In fact the present invention belies that conclusion. Reasons for a lack of predictability are mentioned in the remarks of the

previous response, on pages 3 and 4. In any event, it is apparent that the rationale set forth by the examiner to support the obviousness rejection does not do so.

Rather, it emphasizes that the use of normal strength liquid crystal polymer to achieve cut-resistance comparable to a yarn containing high strength synthetic fiber would be contrary to what he believes the prior art suggests and hence would not be obvious.

Respectfully submitted,

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